

3353
JUL 1 1977
OVERSTATE COUNTY DEPARTMENT

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1977

between

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee

and

WHITTAKER CORPORATION
(BERWICK FORGE & FABRICATING DIVISION)

9% Conditional Sale Indebtedness Due 1993

CONDITIONAL SALE AGREEMENT

Table of Contents

	<u>Page</u>
Article 1. Assignment; Definitions	1
Article 2. Construction and Sale	2
Article 3. Inspection and Delivery	3
Article 4. Purchase Price and Payment	5
Article 5. Security Interest in Equipment	9
Article 6. Taxes	10
Article 7. Maintenance; Casualty Occurrences; Insurance	11
Article 8. Reports and Inspections	13
Article 9. Marking of Equipment	13
Article 10. Compliance with Law and Rules	14
Article 11. Possession and Use	14
Article 12. Prohibition Against Liens	15
Article 13. Indemnities and Warranties	16
Article 14. Assignments	17
Article 15. Defaults	18
Article 16. Remedies	21
Article 17. Applicable State Laws	26
Article 18. Recording	26
Article 19. Article Headings; Effect and Modification of Agreement	27
Article 20. Notice	27
Article 21. Immunities; Satisfaction of Undertaking	28
Article 22. Law Governing	29
Article 23. Execution	29
Schedule I--Amortization of Conditional Sale Indebtedness	
Annex A--Information Relating to Building of Equipment	
Annex B--Schedule of Equipment	
Annex C--Lease	
Annex D--Lease Assignment and Consent	

CONDITIONAL SALE AGREEMENT dated as of July 1, 1977, between WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION) (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY (hereinafter called the Vendee), acting not in its individual capacity but solely as trustee under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with HFC Leasing Inc. (hereinafter called the Beneficiary).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a lease dated as of the date hereof with Chicago and North Western Transportation Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS Continental Illinois National Bank and Trust Company of Chicago (hereinafter sometimes called the Assignee or the Vendor) is acting as agent for certain investors (hereinafter called the Investors) pursuant to the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Lessee, the Beneficiary, the Vendee and the Investors.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee,

as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (hereinafter called the Lease Assignment) and the Lessee shall consent thereto pursuant to a Consent and Agreement in the form attached to Annex D (hereinafter called the Consent).

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Vendee at the place specified in Annex B hereto (or if Annex B does not specify a place, at the place designated by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 6 and 7 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 29, 1977, by reason of noncompliance with the conditions referred to in the next preceding paragraph or clauses set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order (as defined in the Participation Agreement), all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution

of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery each unit of the Equipment shall be presented to an inspector of the Vendee for inspection at the place specified for delivery or at the Builder's plant specified in Annex B hereto, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of the Equipment at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of the Equipment; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid). Notwithstanding anything to the contrary contained herein, the Maximum Purchase Price specified in Item 5 of Annex A hereto shall not be increased without the agreement of each party to the Participation Agreement.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such business day (not later than December 29, 1977, such date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices (with copies to the Lessee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Assignee at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, and New York, N. Y., are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group an amount equal to (i) 38.6000440% of the aggregate Purchase Price of such Group up to the Maximum Purchase Price, plus, (ii) to the extent the Vendee shall have agreed, any amount by which the aggregate Purchase Price exceeds the Maximum Purchase Price; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 5 and July 5 beginning July 5, 1978, to and including January 5, 1993 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 9% per annum, payable (to the extent

accrued) (i) on January 5, 1978, and (ii) on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such instalments of principal will completely amortize the remaining Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months except that interest payable on January 5, 1978, shall be calculated on an actual elapsed day basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (excluding only the obligations set forth in subparagraph (a) of the third paragraph of this Article 4 and the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall

have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Condi-

tional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Vendee's interest in the Lease for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or

depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it or the Lessee is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the secur-

ity interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee agrees that, at Vendee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Agreement in good operating order, repair and condition and eligible for interchange service.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the remaining term of this Agreement or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (each such date being hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of

principal and interest thereafter to be made, in such number of counterparts as the Vendor may request. In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive from the Lessee's insurance coverage any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1978, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the

Vendor, it being understood and agreed that such consent shall not be unreasonably withheld for changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of the Vendee under the Conditional Sale Agreement.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or the Beneficiary or their successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's or the Beneficiary's interest in the Lease and the payments to be

made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all

claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder and (ii) is permitted by, and in accordance with the terms of Article VII of the Trust Agreement. Any such sale, assignment, transfer or disposition which may be made by the Vendee to a vendee, assignee or transferee shall be subject to the assumption by such party of all of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From

and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for seventeen business days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement,

term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceeding shall be commenced by or against the Vendee, the Beneficiary or the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Vendee, any Beneficiary or the Lessee, as the case may be), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee, the Beneficiary or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Beneficiary or the Lessee, as the case may be, or for

its or their property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under § 10A of the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by the Vendee's remedying such default prior to the expiration of the seventeen business day period provided by Article 15(a) hereunder by making payment of the amount in default under Article 15(a) hereof; provided, further, however, that the Vendee shall not have the right to remedy more than three consecutive such defaults and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied; provided, further, that any additional Event of Default under the Lease curable by the payment of money and occurring within the period in which the Vendee has a right to remedy a default as provided in the first and second provisos of this subparagraph shall not be deemed an event of default hereunder if the default under the Lease causing such additional Event of Default is cured by the Vendee's paying that amount of money required to remedy such default prior to the expiration of any grace period provided by the Lease with respect to such default.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and

the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which the Vendor has actual knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate pos-

session of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee,

at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York City, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale, provided that the Lessee may not so bid if it shall have caused the Event or Events of Default in respect of which the relevant Declaration of Default was made. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the

Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the

event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, the Trust Agreement and the Agreement and Assignment, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Lessee, at 400 West Madison Street, Chicago, Illinois 60610, attention of Treasurer,

(b) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department,

(c) to the Owner, at Prudential Plaza, Chicago, Illinois 60601, attention of Donald G. Lohmann, Vice President, with a copy to E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277,

(d) to the Builder, at the address specified in Item 1 of Annex A hereto,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood, anything in this Agreement to the contrary notwithstanding, that each of the warranties, representations, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal warranties, representations, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary (except, with respect to each such party, in connection with the payment or discharge of claims, liens, charges or security interests claimed from, through or under such party or its successors and assigns pursuant to the proviso to the last paragraph of Article 12 of this Agreement and except,

with respect to the Beneficiary, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement), on account of this Agreement or on account of any warranty, representation, undertaking or agreement of the said bank or the Beneficiary hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Vendee warrants that its principal place of business is located in the State of Connecticut.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

WHITTAKER CORPORATION (BERWICK
FORGE & FABRICATING DIVISION),

by

[CORPORATE SEAL]

Authorized Signatory

Attest:

by

Authorized Signatory

Authorized Signatory

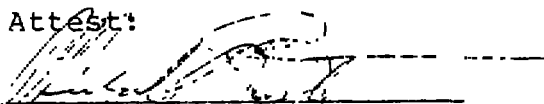
THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee,

by


Vice President

[CORPORATE SEAL]

Attest:


Asst. Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this day of 1977, before me personally appeared , to me personally known, who, being by me duly sworn, say that they are Authorized Signatories of WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.: *Hartford*
COUNTY OF HARTFORD,)

On this the *30th* day of *August*, 1977, before me, **BARBARA S. KACICH**, the undersigned officer, personally appeared *W. KAWAM*, who acknowledged himself to be the **VICE PRESIDENT** of THE CONNECTICUT BANK AND TRUST COMPANY, a corporation, and that he, as such **VICE PRESIDENT**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as **VICE PRESIDENT**.

IN WITNESS WHEREOF, I hereunto set my hand.

Barbara S. Kacich

Notary Public

[Notarial Seal]

My Commission expires

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

SCHEDULE I

Allocation Schedule of Each
\$1,000,000 of Conditional
Sale Indebtedness Payable in (i) One Interim
Payment and (ii) 30 Semiannual Instalments
Commencing on July 5, 1978

<u>Instalment No.</u>	<u>Principal Balance (Before Payment) \$</u>	<u>Interest Payment \$</u>	<u>Principal Recovery \$</u>	<u>Ending Principal \$</u>
(Interim Payment)				
(1/5/78)	1,000,000	*	-0-	1,000,000
1 (7/5/78)	1,000,000	45,000.00	19,332.29	980,667.71
2 (1/5/79)	980,667.71	44,130.05	20,202.24	960,465.47
3 (7/5/79)	960,465.47	43,220.95	21,111.34	939,354.13
4 (1/5/80)	939,354.13	42,270.93	22,061.36	917,292.77
5 (7/5/80)	917,292.77	41,278.17	23,054.12	894,238.65
6 (1/5/81)	894,238.65	40,240.74	24,091.55	870,147.10
7 (7/5/81)	870,147.10	39,156.62	25,175.67	844,971.43
8 (1/5/82)	844,971.43	38,023.71	26,308.58	818,662.85
9 (7/5/82)	818,662.83	36,839.83	27,492.46	791,170.39
10 (1/5/83)	791,170.39	35,602.67	28,729.62	762,440.77
11 (7/5/83)	762,440.77	34,309.83	30,022.46	732,418.31
12 (1/5/84)	732,418.31	32,958.82	31,373.47	701,044.84
13 (7/5/84)	701,044.84	31,547.02	32,785.27	668,259.57
14 (1/5/85)	668,259.57	30,071.68	34,260.61	633,998.96
15 (7/5/85)	633,998.96	28,529.95	35,802.34	598,196.62
16 (1/5/86)	598,196.62	26,918.85	28,781.52	569,415.10
17 (7/5/86)	569,415.10	25,623.68	30,076.69	539,338.41
18 (1/5/87)	539,338.41	24,270.23	31,430.14	507,908.27
19 (7/5/87)	507,908.27	22,855.88	32,844.49	475,063.78
20 (1/5/88)	475,063.78	21,377.88	34,322.49	440,741.29
21 (7/5/88)	440,741.29	19,833.36	35,867.01	404,874.28
22 (1/5/89)	404,874.28	18,219.35	37,481.02	367,393.26
23 (7/5/89)	367,393.26	16,532.70	39,167.67	328,225.59
24 (1/5/90)	328,225.59	14,770.16	40,930.21	287,295.38
25 (7/5/90)	287,295.38	12,928.30	42,772.07	244,523.31
26 (1/5/91)	244,523.31	11,003.55	44,696.82	199,826.49
27 (7/5/91)	199,826.49	8,992.20	46,708.17	153,118.32
28 (1/5/92)	153,118.32	6,890.33	48,810.04	104,308.28
29 (7/5/92)	104,308.28	4,693.88	51,006.49	53,301.79
30 (1/5/93)	53,301.79	2,398.58	53,301.79	-0-

* Interest at the rate of 9% per annum from and including the Date of Deposit (as defined in the Participation Agreement) to January 5, 1978.

Annex A

to

Conditional Sale Agreement

- Item 1: Whittaker Corporation (Berwick Forge & Fabricating Division), P. O. Box 188-West Ninth Street, Berwick, Pennsylvania 18603.
- Item 2: The Equipment shall be settled for in not more than one Group of units of Equipment delivered to and accepted by the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THE AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee

and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$10,000,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$6,139,995.60.

Annex B

to

Conditional Sale Agreement

Type	Builder's Specifi- cations	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price*	Total Base Price*	Estimated Time and Place of Delivery
50'6" 70- ton XM Box cars	Proposal letter dated April 4, 1977 as amended	Berwick, Pennsylvania	344	CNW 155794 through 156137	\$29,046.85	\$9,992,116.40	Septem- ber 1977 Berwick, Pennsyl- vania

* Included as part of the Purchase Price are freight charges of \$549.75 per unit or \$189,114 in the aggregate for transporting the Equipment from Berwick, Pennsylvania to the Lessee's facilities in Proviso, Illinois.

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1977

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee

Lease of Railroad Equipment

Table of Contents

	<u>Page</u>
§ 1. Net Lease	1
§ 2. Delivery and Acceptance of Units	2
§ 3. Rentals	3
§ 4. Term of Lease	5
§ 5. Identification Marks	5
§ 6. Taxes	6
§ 7. Maintenance; Casualty Occurrences, Insurance	9
§ 8. Reports and Inspection	11
§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification	12
§ 10. Default	15
§ 11. Return of Units upon Default	19
§ 12. Assignment; Possession and Use	20
§ 13. Renewal Options and Right of First Refusal	22
§ 14. Return of Units upon Expiration of Lease Term	25
§ 15. Recording	26
§ 16. Income Taxes	27
§ 17. Interest on Overdue Rentals	35
§ 18. Notices	35
§ 19. Severability; Effect and Modification of Lease	36

	<u>Page</u>
§ 20. Execution	36
§ 21. Law Governing	36
§ 22. Definitions	37
§ 23. Concerning the Lessor	37

Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1977, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HFC Leasing Inc. (hereinafter called the Owner).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Whittaker Corporation (Berwick Forge & Fabricating Division), a California corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to Continental Illinois National Bank and Trust Company of Chicago, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Schedule A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduc-

tion thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the pro-

visions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim and 40 consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on January 5, 1978, and shall be in an amount equal to the product of the Purchase Price for such Unit multiplied by .025% for each day elapsed from and including the Closing Date (as defined in the Security Documentation) for such Unit under the Security Documentation to but not including January 5, 1978. The 40 semiannual payments are payable on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1998, as follows: the first 15 such payments shall be in an amount equal to 3.9499998% of the Purchase Price of each such Unit then subject to this Lease; the next 15 such payments shall each be in an amount equal to 3.4200003% of the Purchase Price of each such Unit then subject to this Lease; and the next 10 such payments shall each be in an amount equal to 4.1450000% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (1) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any amounts payable by the Lessor pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement on such date and an amount equal to any amounts payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement; provided, however, that such payment shall be decreased by an amount equal to any funds payable by the Agent to the Lessor pursuant to the third paragraph of Paragraph 8 of the Participation Agreement to the extent such funds are credited by the Agent against such

payment; provided further, however, that if such funds payable by the Agent to the Lessor exceed the amount so payable by the Lessee, then that portion of the rentals payable by the Lessee under this Lease in an amount equal to such excess shall be deemed to be an overpayment of rental and the Lessor shall refund such excess to the Lessee when received from the Agent; and (2) on January 5, 1978, an amount equal to any amounts payable by the Lessor pursuant to clause (b) of such final paragraph of Paragraph 8 on such date.

Notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding payments due to the Lessor by reason of § 16 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of

counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the

interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor

and the Vendor in such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of the Security Documentation or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date, provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20.350% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of

this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units

that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any

time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or

14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability,

claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Documentation.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled by agreement

of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent (as defined in the Security Documentation) shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

ness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount

equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the cov-

enants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination the Lessee shall, in addition, pay to the Lessor for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and the Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorpo-

rated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Document and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached

by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a five year period commencing on the scheduled expiration of the original term of this Lease. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

If the Lessee shall not have elected to extend the term of this Lease but shall have given the Lessor notice of its intention to exercise a right of first refusal with respect to the Units not less than six months prior to the expiration of the original term of this Lease and the Lessor elects to sell the Units to third parties effective upon the expiration of the original term of this Lease, the Lessor shall (a), as promptly as practicable after the Lessee shall have given such notice, engage an appraiser appointed as provided in the fifth paragraph of this § 13 to determine the Fair Market Sale Value of the Units and, upon receipt of such determination, deliver a true copy thereof to the Lessee, and (b), in a commercially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the higher of the Fair Market Sale Value determined by the Appraiser and the sale price set forth in such offer.

Upon purchase of the Units by the Lessee, the Lessor shall upon request of the Lessee execute and deliver to the Lessee or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interest and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such forms as may reasonably be requested by the Lessee, all at the Lessee's expense.

Fair Market Rental and Fair Market Sale Value shall be determined on the basis of, and shall be equal in amount to, the rental or sale value which would obtain in an arm's length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor

or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value out there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If (a), after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, or (b) the Lessor shall be required to engage an appraiser to determine Fair Market Sale Value as provided in the second paragraph of this § 13, such Rental or Sale Value, as the case may be, shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, or the Lessor shall be required to engage an appraiser as aforesaid, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Sale Value, as the case may be, of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall

have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original term or the extended term of this Lease with respect to any Unit which Lessee does not purchase or re-lease pursuant to § 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate, in such city on the lines of Lessee as Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of Lessee as Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (1) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and

tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes.

(a) Loss of Assumed Tax Benefits. If

(i) on the date of delivery of any Unit of Equipment the Owner is not entitled to an investment credit under Section 38 and related sections of the Internal Revenue Code of 1954 (hereinafter called the Code) with respect to such Unit of not less than 10% of the Purchase Price with respect to such Unit; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is at least equivalent to the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units are entitled to an asset depreciation period of 12 years, which is the lower limit listed in Rev. Proc. 77-10, 1977-12 I.R.B. 4, for property classified in Asset Guideline Class 00.25, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the Security Documentation; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are disallowed, or are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the Security Documentation shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the disposition of any one or more of the Units in a taxable transaction, in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by Lessee (herein called a "Capital Expenditure"); provided that in the event a Capital Expenditure is included in the gross income of the Owner, the Owner shall attempt to maximize the future tax benefits from such Capital Expenditure by making such elections (including where advantageous accelerated depreciation elections and election of the applicable asset guideline repair allowance if then permitted) as will increase the Owner's tax deductions;

then the Owner shall be entitled to such indemnities by Lessee as are provided in paragraph (b) of this § 16. For purposes of this § 16, any such aforementioned failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure shall be hereinafter called a "Loss".

(b) Indemnities and Exceptions. In the event the Owner suffers a Loss as defined in paragraph (a) of this § 16 due to:

(A) a Loss described in clause (i) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b)(2) of the Code from commencing with the Owner;

(B) a determination by the Internal Revenue Service in which Lessee has acquiesced (or a final determination by the courts, in the event of a contest pursuant to paragraph (c) of this § 16) that this Lease should not be treated as a lease for tax purposes unless such determination results from the Owner's failure to satisfy the requirements of Section 4(l)(A) and (B) of Rev. Proc. 75-21, 1975-1 C.B. 715, as in effect on the date hereof;

(C) a Loss described in clause (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Owner;

(D) Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(E) a Capital Expenditure; or

(F) any action, or omission to act, at any time, on the part of Lessee or any of its officers, employees or agents (including, without limitation, any action, or omission to act, in respect of the income tax returns of the Lessee);

then, subject to the exceptions in the following subparagraph and the rights of the Lessee to contest any Loss as set forth in paragraph (c), the rental payable for the Unit or Units to which such Loss is attributable shall be adjusted in the manner set forth in paragraph (d), and with respect to a Loss for which lump sum indemnity payments are provided in the third subparagraph of paragraph (d) of this § 16, the Lessee shall, subject to the exceptions set forth in the following subparagraph and Lessee's rights of contest set forth in paragraph (c), pay to the Owner such lump sum indemnity payments as are provided by paragraph (d).

Notwithstanding the provisions of the immediately preceding subparagraph, there shall be no increase made in rentals nor any payment be required to be made by Lessee if the Owner shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if Lessee shall have paid the amounts stipulated under § 7 hereof; or

(ii) a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Owner of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default (or an event that, with the lapse of time or the giving of notice, or

both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made within two business days following written notice of demand therefor from the Owner) shall have occurred and be continuing; or

(iii) the failure of the Owner to claim in a timely and proper manner (including all appropriate elections) on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, subject to the provisions of the fifth subparagraph of paragraph (c) of this § 16; or

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16; or

(vi) with respect to any Unit, any amendment to, or change in (A) the Code or the income tax regulations thereunder, or (B) published Revenue Rulings or Revenue Procedures which lengthen beyond 12 years the minimum period over which such Unit may be depreciated, which in either case become effective after the Closing Date with respect to such Unit, except that this clause (vi) shall not apply with respect to any amendment or change which precludes the Owner from depreciating any Unit to a net salvage value of zero, to the extent that the Owner's Loss is attributable to the difference between (A) a net salvage value of 10% of the Purchase Price of such Unit, and (B) a net salvage value of zero with respect to such Unit; or

(vii) any participation in the residual value of any Unit at the end of the term of this Lease by any party other than the Owner; or

(viii) the taking or failure to take at any time by the Owner or any of its officers, employees or agents

of any other action whatsoever which is inconsistent with the Owner's obligations under the Trust Agreement, the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made with two business days following written notice of demand therefor from the Owner) has occurred and is continuing.

(c) Lessee's Rights of Contest. The Owner shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments. The Owner shall, without further action by Lessee, contest any such claim or proceeding until the conclusion of the audit or other proceeding at the first administrative level. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify Lessee of such proposed adjustment and shall furnish to Lessee a statement describing such Loss in reasonable detail. The Owner agrees, if so requested by Lessee, to contest such adjustment; provided, however, that the Owner shall not be obligated to contest such adjustment unless Lessee shall first have furnished to the Owner a written opinion of independent tax counsel, selected by the Owner after consultation with Lessee (hereinafter called the Special Tax Counsel), that there is a meritorious basis for contesting such proposed adjustment; and provided further, however, that prior to entering into such contest, the Owner shall have been first indemnified in a manner reasonably satisfactory to it by Lessee for any Loss that results from an adverse determination with respect to the proposed adjustment and for all expenses which may be entailed therein.

If Lessee shall have established the Owner's obligation to contest such proposed adjustment as provided in the immediately preceding paragraph, then the Owner's obligation to pursue such contest shall be continuous and unlimited

until the matter is concluded at the highest judicial level; provided that the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto. If the Owner, at the time it so declines, is furnished a written opinion of Special Tax Counsel, which the Owner shall obtain at its expense, to the effect that there is no meritorious basis for further contesting such adjustment, then Lessee shall remain obligated to indemnify the Owner for any Loss that results from the proposed adjustment. The Owner may so decline to take any further action with respect to a proposed adjustment without obtaining the opinion of Special Tax Counsel described in the preceding sentence; provided that the Owner shall thereby waive its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

The Owner, in its sole discretion, shall determine whether to contest any proposed adjustment beyond the level of the Internal Revenue Service auditing agent by any further administrative proceedings and shall determine the initial and any appellate judicial forum for so contesting any proposed adjustment and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency.

If any such proposed adjustment results from a determination that this Lease is not a true lease, which determination would result in an indemnity payable by Lessee to the Owner under the provision of clause (B) of paragraph (b) of this § 16, then, unless otherwise agreed to by Lessee, the Owner may not decline to contest such determination without waiving its right to any indemnity payment that would result from acceptance of such proposed determination.

If the Owner furnishes to Lessee a written opinion of the Owner's Counsel that there is no meritorious basis to support a claim for any credit or deduction contemplated by paragraph (a) of this § 16, the Lessee may contest such opinion by engaging, at its expense, independent tax counsel, selected by Lessee with approval of the Owner (not to be unreasonably withheld) to determine if it would be proper to claim any such credit or deduction. If Lessee fails to contest within 30 days after receipt of the opinion of the Owner's Counsel, or its independent tax counsel concurs with

such opinion, the Owner's failure to claim such credit or deduction shall not constitute an Excluded Event, and the Lessee shall commence payment of indemnities as provided by paragraphs (a) and (d) of this § 16. Except as expressly provided in the preceding sentence, the failure of the Owner to claim such credit or deduction in a timely and proper manner shall constitute an Excluded Event.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, after due consultation with Lessee, in preserving for the Owner the after-tax rate of return and after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time, but not more than such after-tax rate of return and after-tax cash flow that would have been realized on the bases and assumptions (including, without limitation, tax rates) used by the Owner in originally evaluating this transaction. The Owner shall furnish Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

Lessee's obligation to pay any indemnity payable pursuant to this § 16 shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after Lessee's receipt of the statement referred to in the third sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this § 16 shall be structured as level

future rent increases, and Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional. The amount of rental resulting from any one Loss shall be adjusted from time to time for each change in the Code and the income tax regulations (including, without limitation, tax rates) which affects the Owner's net after-tax rate of return and after-tax cash flow but such adjustment shall not result in an after-tax rate of return and after-tax cash flow more than that contemplated by the Owner in originally evaluating this transaction.

The amount of each payment of indemnity payable pursuant to this § 16 with respect to a Loss shall (A) reflect the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, and (B) reflect the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment.

(e) Adjustment of Casualty Values. In the event that Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation.

(f) Definition of Owner. For purposes of this Lease, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments to Owner. Lessee expressly acknowledges that this § 16 is for the benefit of the Owner as a third party beneficiary. All payments to be made pursuant to this § 16 shall be made directly to the Owner at its address set forth in § 12 of the Participation Agreement.

(h) Change in Tax Law Prior to Closing. If any amendment to the Code or income tax regulations (including,

without limitation, a change in tax rates) is made effective with respect to any Unit prior to the Closing Date for such Unit, and such amendment causes a change in the tax benefits contemplated by the Owner, then the rental rate specified in § 3 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve the Owner's net after-tax return and after-tax cash flow (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) at the same level as if such tax benefits had not been changed; provided, however, such rental rate shall not be reduced below the amounts required to satisfy the obligations of the Trustee under the Security Documentation; and provided further, that the rentals, as so adjusted, shall be sufficient to enable the Owner to satisfy the pre-tax cash flow and pre-tax profit requirements set forth in Rev. Proc. 75-21, 1975-1 C.B. 715, as amended through the Closing Date for such Unit. The adjustments to the amount of the rentals under the Lease pursuant to this paragraph shall be made by the Owner after due consultation with the Lessee. In this connection the Owner shall provide Lessee with a schedule setting forth in reasonable detail the computations and methods used in computing such adjustments.

(i) Lessee agrees to cooperate and join with the Owner, at the Owner's expense, in any administrative or judicial proceeding in which the Owner is engaged in order to sustain its entitlement to any of the tax benefits the Loss of which is specified in paragraph (a) of this § 16 if such Loss is the result of an amendment or change described in subparagraph (vi) of paragraph (b) of this § 16.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 10% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to Donald G. Lohmann, Vice

President, and E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606; Attention Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 231 South La Salle Street, Chicago, Illinois 60693, Attention of Corporate Trust Department.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section

20c of the Interstate Commerce Act.

§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

[Corporate Seal]

by

Attest:

----- Vice President -----

Assistant Secretary

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee

[Corporate Seal]

by

Attest:

Vice President

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this the day of , 19 , before me, , the undersigned officer, personally appeared , who acknowledged himself to be the of THE CONNECTICUT BANK AND TRUST COMPANY, a corporation, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as .

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50' 6" 70-ton XM Box Cars	344	CNW 155794 through 156137

SCHEDULE 2 TO LEASE
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
Interim Payment	106.154
No. 1	105.600
No. 2	105.094
No. 3	104.703
No. 4	104.303
No. 5	103.973
No. 6	96.768
No. 7	96.376
No. 8	95.814
No. 9	95.242
No. 10	87.646
No. 11	86.786
No. 12	85.617
No. 13	84.364
No. 14	75.956
No. 15	74.988
No. 16	73.632
No. 17	72.171
No. 18	70.270
No. 19	68.235
No. 20	65.708
No. 21	63.018
No. 22	59.849
No. 23	56.364
No. 24	52.548
No. 25	48.519
No. 26	44.267
No. 27	39.531
No. 28	34.801
No. 29	29.815
No. 30	29.068
No. 31	28.389
No. 32	27.775
No. 33	27.226
No. 34	26.741
No. 35	26.320
No. 36	25.712
No. 37	25.416
No. 38	25.182
No. 39	25.011
No. 40	20.350

ASSIGNMENT OF LEASE AND AGREEMENT
dated as of July 1, 1977 (hereinafter called
this Assignment), by and between THE CONNECTICUT
BANK AND TRUST COMPANY, not in its individual
capacity but solely as trustee (hereinafter
called the Lessor or the Vendee) under a
Trust Agreement dated as of the date hereof
(hereinafter called the Trust Agreement) with
HFC Leasing Inc. (hereinafter called the
Beneficiary) and CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO, as Agent
(hereinafter called the Vendor) under a
Participation Agreement dated as of the date
hereof.

WHEREAS the Vendee is entering into a Conditional
Sale Agreement dated as of the date hereof (hereinafter
called the Security Documentation) with Whittaker Corporation
(Berwick Forge & Fabricating Division) (hereinafter called
the Builder), providing for the sale to the Vendee of such
units of railroad equipment (hereinafter called the Units)
described in Annex B thereto as are delivered to and
accepted by the Vendee thereunder;

WHEREAS the Lessor and Chicago and North Western
Transportation Company (hereinafter called the Lessee)
have entered into a Lease of Railroad Equipment dated as of
the date hereof (hereinafter called the Lease), providing
for the leasing by the Lessor to the Lessee of the Units;
and

WHEREAS, in order to provide security for the
obligations of the Lessor under the Security Documentation
and as an inducement to the Vendor to invest in the
Conditional Sale Indebtedness (as that term is defined in
the Security Documentation), the Lessor agrees to assign for
security purposes its rights in, to and under the Lease to
the Vendor;

NOW, THEREFORE, in consideration of the premises
and of the payments to be made and the covenants hereinafter
mentioned to be kept and performed, the parties hereto
agree as follows:

1. The Lessor hereby assigns, transfers and sets

over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, so long as no Event of Default or event which with lapse of time and/or giving of notice provided for in the Lease could constitute an Event of Default under the Lease shall have occurred and be continuing, and without any way limiting the right of the Vendor to exercise the rights assigned to it hereunder on its own without the consent of the Vendee, the Vendee shall be entitled to exercise any right of the Lessor under the Lease if the holders of interests totaling more than 70% of the aggregate Conditional Sale Indebtedness then outstanding shall have consented to, and the Vendor shall have been notified by the Vendee or the Beneficiary of, such exercise. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments made by the Lessee to the Vendee or the Beneficiary pursuant to § 16 of the Lease.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation and Paragraph 8 of the

Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. The Vendor shall notify the Lessor at the address set forth in the Lease (i) of the Vendor's receipt of any rental payment under the first paragraph of § 3 of the Lease and (ii) if the Vendor shall not receive any such rental payment when due; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor

the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or the Beneficiary, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor or the Beneficiary shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights

assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The counterpart of this Assignment delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment to the extent they are for the sole benefit of the Lessor and not required to satisfy the obligations of the Lessor under the Security Documentation, without the prior consent of the Lessor.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of

the Lessor under the Security Documentation or amounts payable under § 16 of the Lease, or empower the Vendor in any way to waive or release the Lessee's obligation to pay the same, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts and amounts payable under § 16 of the Lease, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written consent of the Vendor and (b) each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or negligence, or against the Beneficiary under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Beneficiary, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested,
all as of the date first above written.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

[Corporate Seal]

by

Attest:

Vice President

Assistant Secretary

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Agent,

[Corporate Seal]

by

Attest:

Vice President

Trust Officer

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this the day of , 19 , before me,
 , the undersigned officer, personally
appeared , who acknowledged himself to be
the of THE CONNECTICUT BANK AND
TRUST COMPANY, a corporation, and that he, as such .
 , being authorized so to do, executed the foregoing
instrument for the purposes therein contained, by signing
the name of the corporation by himself as .

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of , 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of Continental Illinois National Bank and Trust Company of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys (other than any payment provided for by § 16 of the Lease) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at 231 South La Salle Street, Chicago, Illinois 60693, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) in accordance with the provisions of the Lease Assignment, the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois

and, for all purposes, shall be construed in accordance with the laws of said State.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY, as Lessee,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1977.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO, as
Agent,

by

Vice President

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1977

between

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee

and

WHITTAKER CORPORATION
(BERWICK FORGE & FABRICATING DIVISION)

9% Conditional Sale Indebtedness Due 1993

CONDITIONAL SALE AGREEMENT

Table of Contents

	<u>Page</u>
Article 1. Assignment; Definitions	1
Article 2. Construction and Sale	2
Article 3. Inspection and Delivery	3
Article 4. Purchase Price and Payment	5
Article 5. Security Interest in Equipment	9
Article 6. Taxes	10
Article 7. Maintenance; Casualty Occurrences; Insurance	11
Article 8. Reports and Inspections	13
Article 9. Marking of Equipment	13
Article 10. Compliance with Law and Rules	14
Article 11. Possession and Use	14
Article 12. Prohibition Against Liens	15
Article 13. Indemnities and Warranties	16
Article 14. Assignments	17
Article 15. Defaults	18
Article 16. Remedies	21
Article 17. Applicable State Laws	26
Article 18. Recording	26
Article 19. Article Headings; Effect and Modification of Agreement	27
Article 20. Notice	27
Article 21. Immunities; Satisfaction of Undertaking	28
Article 22. Law Governing	29
Article 23. Execution	29
Schedule I--Amortization of Conditional Sale Indebtedness	
Annex A--Information Relating to Building of Equipment	
Annex B--Schedule of Equipment	
Annex C--Lease	
Annex D--Lease Assignment and Consent	

CONDITIONAL SALE AGREEMENT dated as of July 1, 1977, between WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION) (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY (hereinafter called the Vendee), acting not in its individual capacity but solely as trustee under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with HFC Leasing Inc. (hereinafter called the Beneficiary).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a lease dated as of the date hereof with Chicago and North Western Transportation Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS Continental Illinois National Bank and Trust Company of Chicago (hereinafter sometimes called the Assignee or the Vendor) is acting as agent for certain investors (hereinafter called the Investors) pursuant to the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Lessee, the Beneficiary, the Vendee and the Investors.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee,

as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (hereinafter called the Lease Assignment) and the Lessee shall consent thereto pursuant to a Consent and Agreement in the form attached to Annex D (hereinafter called the Consent).

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Vendee at the place specified in Annex B hereto (or if Annex B does not specify a place, at the place designated by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 6 and 7 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 29, 1977, by reason of noncompliance with the conditions referred to in the next preceding paragraph or clauses set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order (as defined in the Participation Agreement), all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution

of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery each unit of the Equipment shall be presented to an inspector of the Vendee for inspection at the place specified for delivery or at the Builder's plant specified in Annex B hereto, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of the Equipment at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of the Equipment; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid). Notwithstanding anything to the contrary contained herein, the Maximum Purchase Price specified in Item 5 of Annex A hereto shall not be increased without the agreement of each party to the Participation Agreement.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such business day (not later than December 29, 1977, such date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices (with copies to the Lessee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Assignee at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, and New York, N. Y., are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group an amount equal to (i) 38.6000440% of the aggregate Purchase Price of such Group up to the Maximum Purchase Price, plus, (ii) to the extent the Vendee shall have agreed, any amount by which the aggregate Purchase Price exceeds the Maximum Purchase Price; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 5 and July 5 beginning July 5, 1978, to and including January 5, 1993 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 9% per annum, payable (to the extent

accrued) (i) on January 5, 1978, and (ii) on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such instalments of principal will completely amortize the remaining Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months except that interest payable on January 5, 1978, shall be calculated on an actual elapsed day basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (excluding only the obligations set forth in subparagraph (a) of the third paragraph of this Article 4 and the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall

have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Condi-

tional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Vendee's interest in the Lease for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or

depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it or the Lessee is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the secur-

ity interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee agrees that, at Vendee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Agreement in good operating order, repair and condition and eligible for interchange service.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the remaining term of this Agreement or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (each such date being hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of

principal and interest thereafter to be made, in such number of counterparts as the Vendor may request. In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive from the Lessee's insurance coverage any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1978, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the

Vendor, it being understood and agreed that such consent shall not be unreasonably withheld for changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of the Vendee under the Conditional Sale Agreement.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or the Beneficiary or their successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's or the Beneficiary's interest in the Lease and the payments to be

made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all

claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder and (ii) is permitted by, and in accordance with the terms of Article VII of the Trust Agreement. Any such sale, assignment, transfer or disposition which may be made by the Vendee to a vendee, assignee or transferee shall be subject to the assumption by such party of all of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From

and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for seventeen business days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement,

term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceeding shall be commenced by or against the Vendee, the Beneficiary or the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Vendee, any Beneficiary or the Lessee, as the case may be), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee, the Beneficiary or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Beneficiary or the Lessee, as the case may be, or for

its or their property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under § 10A of the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by the Vendee's remedying such default prior to the expiration of the seventeen business day period provided by Article 15(a) hereunder by making payment of the amount in default under Article 15(a) hereof; provided, further, however, that the Vendee shall not have the right to remedy more than three consecutive such defaults and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied; provided, further, that any additional Event of Default under the Lease curable by the payment of money and occurring within the period in which the Vendee has a right to remedy a default as provided in the first and second provisos of this subparagraph shall not be deemed an event of default hereunder if the default under the Lease causing such additional Event of Default is cured by the Vendee's paying that amount of money required to remedy such default prior to the expiration of any grace period provided by the Lease with respect to such default.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and

the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which the Vendor ~~is~~ has actual knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate pos-

session of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee,

at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York City, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale, provided that the Lessee may not so bid if it shall have caused the Event or Events of Default in respect of which the relevant Declaration of Default was made. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the

Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the

event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, the Trust Agreement and the Agreement and Assignment, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Lessee, at 400 West Madison Street, Chicago, Illinois 60610, attention of Treasurer,

(b) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department,

(c) to the Owner, at Prudential Plaza, Chicago, Illinois 60601, attention of Donald G. Lohmann, Vice President, with a copy to E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277,

(d) to the Builder, at the address specified in Item 1 of Annex A hereto,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood, anything in this Agreement to the contrary notwithstanding, that each of the warranties, representations, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal warranties, representations, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary (except, with respect to each such party, in connection with the payment or discharge of claims, liens, charges or security interests claimed from, through or under such party or its successors and assigns pursuant to the proviso to the last paragraph of Article 12 of this Agreement and except,

with respect to the Beneficiary, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement), on account of this Agreement or on account of any warranty, representation, undertaking or agreement of the said bank or the Beneficiary hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Vendee warrants that its principal place of business is located in the State of Connecticut.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.



Attest: [Signature]
Authorized Signatory

WHITTAKER CORPORATION (BERWICK
FORGE & FABRICATING DIVISION),

by [Signature]
Authorized Signatory

by [Signature]
Authorized Signatory

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee,

by

[CORPORATE SEAL]

Vice President

Attest:

Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this 30TH day of AUGUST, 1977, before me personally appeared J. Malatras & Howard E. McKinnon, to me personally known, who, being by me duly sworn, say that they are Authorized Signatories of WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lloyd H. Adams
 Notary Public
 LLOYD H. ADAMS, NOTARY PUBLIC
 BERWICK BOROUGH, COLUMBIA COUNTY
 MY COMMISSION EXPIRES SEPT. 19, 1878
 Member, Pennsylvania Association of Notaries

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this the _____ day of _____, 19____, before me,
_____, the undersigned officer, personally
appeared _____, who acknowledged himself to be
the _____ of THE CONNECTICUT BANK AND
TRUST COMPANY, a corporation, and that he, as such
_____, being authorized so to do, executed the
foregoing instrument for the purposes therein contained, by
signing the name of the corporation by himself as

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule of Each \$1,000,000 of Conditional Sale Indebtedness Payable in (i) One Interim Payment and (ii) 30 Semiannual Instalments Commencing on July 5, 1978

<u>Instalment No.</u>	<u>Principal Balance (Before Payment) \$</u>	<u>Interest Payment \$</u>	<u>Principal Recovery \$</u>	<u>Ending Principal \$</u>
(Interim Payment)				
(1/5/78)	1,000,000	*	-0-	1,000,000
1 (7/5/78)	1,000,000	45,000.00	19,332.29	980,667.71
2 (1/5/79)	980,667.71	44,130.05	20,202.24	960,465.47
3 (7/5/79)	960,465.47	43,220.95	21,111.34	939,354.13
4 (1/5/80)	939,354.13	42,270.93	22,061.36	917,292.77
5 (7/5/80)	917,292.77	41,278.17	23,054.12	894,238.65
6 (1/5/81)	894,238.65	40,240.74	24,091.55	870,147.10
7 (7/5/81)	870,147.10	39,156.62	25,175.67	844,971.43
8 (1/5/82)	844,971.43	38,023.71	26,308.58	818,662.85
9 (7/5/82)	818,662.83	36,839.83	27,492.46	791,170.39
10 (1/5/83)	791,170.39	35,602.67	28,729.62	762,440.77
11 (7/5/83)	762,440.77	34,309.83	30,022.46	732,418.31
12 (1/5/84)	732,418.31	32,958.82	31,373.47	701,044.84
13 (7/5/84)	701,044.84	31,547.02	32,785.27	668,259.57
14 (1/5/85)	668,259.57	30,071.68	34,260.61	633,998.96
15 (7/5/85)	633,998.96	28,529.95	35,802.34	598,196.62
16 (1/5/86)	598,196.62	26,918.85	28,781.52	569,415.10
17 (7/5/86)	569,415.10	25,623.68	30,076.69	539,338.41
18 (1/5/87)	539,338.41	24,270.23	31,430.14	507,908.27
19 (7/5/87)	507,908.27	22,855.88	32,844.49	475,063.78
20 (1/5/88)	475,063.78	21,377.88	34,322.49	440,741.29
21 (7/5/88)	440,741.29	19,833.36	35,867.01	404,874.28
22 (1/5/89)	404,874.28	18,219.35	37,481.02	367,393.26
23 (7/5/89)	367,393.26	16,532.70	39,167.67	328,225.59
24 (1/5/90)	328,225.59	14,770.16	40,930.21	287,295.38
25 (7/5/90)	287,295.38	12,928.30	42,772.07	244,523.31
26 (1/5/91)	244,523.31	11,003.55	44,696.82	199,826.49
27 (7/5/91)	199,826.49	8,992.20	46,708.17	153,118.32
28 (1/5/92)	153,118.32	6,890.33	48,810.04	104,308.28
29 (7/5/92)	104,308.28	4,693.88	51,006.49	53,301.79
30 (1/5/93)	53,301.79	2,398.58	53,301.79	-0-

* Interest at the rate of 9% per annum from and including the Date of Deposit (as defined in the Participation Agreement) to January 5, 1978.

Annex A

to

Conditional Sale Agreement

- Item 1: Whittaker Corporation (Berwick Forge & Fabricating Division), P. O. Box 188-West Ninth Street, Berwick, Pennsylvania 18603.
- Item 2: The Equipment shall be settled for in not more than one Group of units of Equipment delivered to and accepted by the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THE AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee

and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$10,000,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$6,139,995.60.

Annex B

to

Conditional Sale Agreement

Type	Builder's Specifi- cations	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price*	Total Base Price*	Estimated Time and Place of Delivery
50'6" 70- ton XM Box cars	Proposal letter dated April 4, 1977 as amended	Berwick, Pennsylvania	344	CNW 155794 through 156137	\$29,046.85	\$9,992,116.40	Septem- ber 1977 Berwick, Pennsyl- vania

* Included as part of the Purchase Price are freight charges of \$549.75 per unit or \$189,114 in the aggregate for transporting the Equipment from Berwick, Pennsylvania to the Lessee's facilities in Proviso, Illinois.

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1977

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee

Lease of Railroad Equipment

Table of Contents

	<u>Page</u>
§ 1. Net Lease	1
§ 2. Delivery and Acceptance of Units	2
§ 3. Rentals	3
§ 4. Term of Lease	5
§ 5. Identification Marks	5
§ 6. Taxes	6
§ 7. Maintenance; Casualty Occurrences, Insurance	9
§ 8. Reports and Inspection	11
§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification	12
§ 10. Default	15
§ 11. Return of Units upon Default	19
§ 12. Assignment; Possession and Use	20
§ 13. Renewal Options and Right of First Refusal	22
§ 14. Return of Units upon Expiration of Lease Term	25
§ 15. Recording	26
§ 16. Income Taxes	27
§ 17. Interest on Overdue Rentals	35
§ 18. Notices	35
§ 19. Severability; Effect and Modification of Lease	36

	<u>Page</u>
§ 20. Execution	36
§ 21. Law Governing	36
§ 22. Definitions	37
§ 23. Concerning the Lessor	37

Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1977, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HFC Leasing Inc. (hereinafter called the Owner).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Whittaker Corporation (Berwick Forge & Fabricating Division), a California corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to Continental Illinois National Bank and Trust Company of Chicago, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Schedule A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduc-

tion thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the pro-

visions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim and 40 consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on January 5, 1978, and shall be in an amount equal to the product of the Purchase Price for such Unit multiplied by .025% for each day elapsed from and including the Closing Date (as defined in the Security Documentation) for such Unit under the Security Documentation to but not including January 5, 1978. The 40 semiannual payments are payable on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1998, as follows: the first 15 such payments shall be in an amount equal to 3.9499998% of the Purchase Price of each such Unit then subject to this Lease; the next 15 such payments shall each be in an amount equal to 3.4200003% of the Purchase Price of each such Unit then subject to this Lease; and the next 10 such payments shall each be in an amount equal to 4.1450000% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (1) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any amounts payable by the Lessor pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement on such date and an amount equal to any amounts payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement; provided, however, that such payment shall be decreased by an amount equal to any funds payable by the Agent to the Lessor pursuant to the third paragraph of Paragraph 8 of the Participation Agreement to the extent such funds are credited by the Agent against such

payment; provided further, however, that if such funds payable by the Agent to the Lessor exceed the amount so payable by the Lessee, then that portion of the rentals payable by the Lessee under this Lease in an amount equal to such excess shall be deemed to be an overpayment of rental and the Lessor shall refund such excess to the Lessee when received from the Agent; and (2) on January 5, 1978, an amount equal to any amounts payable by the Lessor pursuant to clause (b) of such final paragraph of Paragraph 8 on such date.

Notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding payments due to the Lessor by reason of § 16 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of

counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the

interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor

and the Vendor in such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of the Security Documentation or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date, provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20.350% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of

this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units

that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any

time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or

14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability,

claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Documentation.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled by agreement

of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent (as defined in the Security Documentation) shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

ness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount

equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the cov-

enants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination the Lessee shall, in addition, pay to the Lessor for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and the Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorpo-

rated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Document and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached

by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a five year period commencing on the scheduled expiration of the original term of this Lease. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

If the Lessee shall not have elected to extend the term of this Lease but shall have given the Lessor notice of its intention to exercise a right of first refusal with respect to the Units not less than six months prior to the expiration of the original term of this Lease and the Lessor elects to sell the Units to third parties effective upon the expiration of the original term of this Lease, the Lessor shall (a), as promptly as practicable after the Lessee shall have given such notice, engage an appraiser appointed as provided in the fifth paragraph of this § 13 to determine the Fair Market Sale Value of the Units and, upon receipt of such determination, deliver a true copy thereof to the Lessee, and (b), in a commercially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the higher of the Fair Market Sale Value determined by the Appraiser and the sale price set forth in such offer.

Upon purchase of the Units by the Lessee, the Lessor shall upon request of the Lessee execute and deliver to the Lessee or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interest and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such forms as may reasonably be requested by the Lessee, all at the Lessee's expense.

Fair Market Rental and Fair Market Sale Value shall be determined on the basis of, and shall be equal in amount to, the rental or sale value which would obtain in an arm's length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor

or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value out there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If (a), after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, or (b) the Lessor shall be required to engage an appraiser to determine Fair Market Sale Value as provided in the second paragraph of this § 13, such Rental or Sale Value, as the case may be, shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, or the Lessor shall be required to engage an appraiser as aforesaid, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Sale Value, as the case may be, of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall

have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original term or the extended term of this Lease with respect to any Unit which Lessee does not purchase or re-lease pursuant to § 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate, in such city on the lines of Lessee as Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of Lessee as Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and

tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes.

(a) Loss of Assumed Tax Benefits. If

(i) on the date of delivery of any Unit of Equipment the Owner is not entitled to an investment credit under Section 38 and related sections of the Internal Revenue Code of 1954 (hereinafter called the Code) with respect to such Unit of not less than 10% of the Purchase Price with respect to such Unit; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is at least equivalent to the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units are entitled to an asset depreciation period of 12 years, which is the lower limit listed in Rev. Proc. 77-10, 1977-12 I.R.B. 4, for property classified in Asset Guideline Class 00.25, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the Security Documentation; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are disallowed, or are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the Security Documentation shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the disposition of any one or more of the Units in a taxable transaction, in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by Lessee (herein called a "Capital Expenditure"); provided that in the event a Capital Expenditure is included in the gross income of the Owner, the Owner shall attempt to maximize the future tax benefits from such Capital Expenditure by making such elections (including where advantageous accelerated depreciation elections and election of the applicable asset guideline repair allowance if then permitted) as will increase the Owner's tax deductions;

then the Owner shall be entitled to such indemnities by Lessee as are provided in paragraph (b) of this § 16. For purposes of this § 16, any such aforementioned failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure shall be hereinafter called a "Loss".

(b) Indemnities and Exceptions. In the event the Owner suffers a Loss as defined in paragraph (a) of this § 16 due to:

(A) a Loss described in clause (i) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b)(2) of the Code from commencing with the Owner;

(B) a determination by the Internal Revenue Service in which Lessee has acquiesced (or a final determination by the courts, in the event of a contest pursuant to paragraph (c) of this § 16) that this Lease should not be treated as a lease for tax purposes unless such determination results from the Owner's failure to satisfy the requirements of Section 4(l)(A) and (B) of Rev. Proc. 75-21, 1975-1 C.B. 715, as in effect on the date hereof;

(C) a Loss described in clause (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Owner;

(D) Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(E) a Capital Expenditure; or

(F) any action, or omission to act, at any time, on the part of Lessee or any of its officers, employees or agents (including, without limitation, any action, or omission to act, in respect of the income tax returns of the Lessee);

then, subject to the exceptions in the following subparagraph and the rights of the Lessee to contest any Loss as set forth in paragraph (c), the rental payable for the Unit or Units to which such Loss is attributable shall be adjusted in the manner set forth in paragraph (d), and with respect to a Loss for which lump sum indemnity payments are provided in the third subparagraph of paragraph (d) of this § 16, the Lessee shall, subject to the exceptions set forth in the following subparagraph and Lessee's rights of contest set forth in paragraph (c), pay to the Owner such lump sum indemnity payments as are provided by paragraph (d).

Notwithstanding the provisions of the immediately preceding subparagraph, there shall be no increase made in rentals nor any payment be required to be made by Lessee if the Owner shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if Lessee shall have paid the amounts stipulated under § 7 hereof; or

(ii) a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Owner of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default (or an event that, with the lapse of time or the giving of notice, or

both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made within two business days following written notice of demand therefor from the Owner) shall have occurred and be continuing; or

(iii) the failure of the Owner to claim in a timely and proper manner (including all appropriate elections) on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, subject to the provisions of the fifth subparagraph of paragraph (c) of this § 16; or

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16; or

(vi) with respect to any Unit, any amendment to, or change in (A) the Code or the income tax regulations thereunder, or (B) published Revenue Rulings or Revenue Procedures which lengthen beyond 12 years the minimum period over which such Unit may be depreciated, which in either case become effective after the Closing Date with respect to such Unit, except that this clause (vi) shall not apply with respect to any amendment or change which precludes the Owner from depreciating any Unit to a net salvage value of zero, to the extent that the Owner's Loss is attributable to the difference between (A) a net salvage value of 10% of the Purchase Price of such Unit, and (B) a net salvage value of zero with respect to such Unit; or

(vii) any participation in the residual value of any Unit at the end of the term of this Lease by any party other than the Owner; or

(viii) the taking or failure to take at any time by the Owner or any of its officers, employees or agents

of any other action whatsoever which is inconsistent with the Owner's obligations under the Trust Agreement, the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made with two business days following written notice of demand therefor from the Owner) has occurred and is continuing.

(c) Lessee's Rights of Contest. The Owner shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments. The Owner shall, without further action by Lessee, contest any such claim or proceeding until the conclusion of the audit or other proceeding at the first administrative level. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify Lessee of such proposed adjustment and shall furnish to Lessee a statement describing such Loss in reasonable detail. The Owner agrees, if so requested by Lessee, to contest such adjustment; provided, however, that the Owner shall not be obligated to contest such adjustment unless Lessee shall first have furnished to the Owner a written opinion of independent tax counsel, selected by the Owner after consultation with Lessee (hereinafter called the Special Tax Counsel), that there is a meritorious basis for contesting such proposed adjustment; and provided further, however, that prior to entering into such contest, the Owner shall have been first indemnified in a manner reasonably satisfactory to it by Lessee for any Loss that results from an adverse determination with respect to the proposed adjustment and for all expenses which may be entailed therein.

If Lessee shall have established the Owner's obligation to contest such proposed adjustment as provided in the immediately preceding paragraph, then the Owner's obligation to pursue such contest shall be continuous and unlimited

until the matter is concluded at the highest judicial level; provided that the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto. If the Owner, at the time it so declines, is furnished a written opinion of Special Tax Counsel, which the Owner shall obtain at its expense, to the effect that there is no meritorious basis for further contesting such adjustment, then Lessee shall remain obligated to indemnify the Owner for any Loss that results from the proposed adjustment. The Owner may so decline to take any further action with respect to a proposed adjustment without obtaining the opinion of Special Tax Counsel described in the preceding sentence; provided that the Owner shall thereby waive its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

The Owner, in its sole discretion, shall determine whether to contest any proposed adjustment beyond the level of the Internal Revenue Service auditing agent by any further administrative proceedings and shall determine the initial and any appellate judicial forum for so contesting any proposed adjustment and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency.

If any such proposed adjustment results from a determination that this Lease is not a true lease, which determination would result in an indemnity payable by Lessee to the Owner under the provision of clause (B) of paragraph (b) of this § 16, then, unless otherwise agreed to by Lessee, the Owner may not decline to contest such determination without waiving its right to any indemnity payment that would result from acceptance of such proposed determination.

If the Owner furnishes to Lessee a written opinion of the Owner's Counsel that there is no meritorious basis to support a claim for any credit or deduction contemplated by paragraph (a) of this § 16, the Lessee may contest such opinion by engaging, at its expense, independent tax counsel, selected by Lessee with approval of the Owner (not to be unreasonably withheld) to determine if it would be proper to claim any such credit or deduction. If Lessee fails to contest within 30 days after receipt of the opinion of the Owner's Counsel, or its independent tax counsel concurs with

such opinion, the Owner's failure to claim such credit or deduction shall not constitute an Excluded Event, and the Lessee shall commence payment of indemnities as provided by paragraphs (a) and (d) of this § 16. Except as expressly provided in the preceding sentence, the failure of the Owner to claim such credit or deduction in a timely and proper manner shall constitute an Excluded Event.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, after due consultation with Lessee, in preserving for the Owner the after-tax rate of return and after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time, but not more than such after-tax rate of return and after-tax cash flow that would have been realized on the bases and assumptions (including, without limitation, tax rates) used by the Owner in originally evaluating this transaction. The Owner shall furnish Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

Lessee's obligation to pay any indemnity payable pursuant to this § 16 shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after Lessee's receipt of the statement referred to in the third sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this § 16 shall be structured as level

future rent increases, and Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional. The amount of rental resulting from any one Loss shall be adjusted from time to time for each change in the Code and the income tax regulations (including, without limitation, tax rates) which affects the Owner's net after-tax rate of return and after-tax cash flow but such adjustment shall not result in an after-tax rate of return and after-tax cash flow more than that contemplated by the Owner in originally evaluating this transaction.

The amount of each payment of indemnity payable pursuant to this § 16 with respect to a Loss shall (A) reflect the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, and (B) reflect the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment.

(e) Adjustment of Casualty Values. In the event that Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation.

(f) Definition of Owner. For purposes of this Lease, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments to Owner. Lessee expressly acknowledges that this § 16 is for the benefit of the Owner as a third party beneficiary. All payments to be made pursuant to this § 16 shall be made directly to the Owner at its address set forth in § 12 of the Participation Agreement.

(h) Change in Tax Law Prior to Closing. If any amendment to the Code or income tax regulations (including,

without limitation, a change in tax rates) is made effective with respect to any Unit prior to the Closing Date for such Unit, and such amendment causes a change in the tax benefits contemplated by the Owner, then the rental rate specified in § 3 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve the Owner's net after-tax return and after-tax cash flow (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) at the same level as if such tax benefits had not been changed; provided, however, such rental rate shall not be reduced below the amounts required to satisfy the obligations of the Trustee under the Security Documentation; and provided further, that the rentals, as so adjusted, shall be sufficient to enable the Owner to satisfy the pre-tax cash flow and pre-tax profit requirements set forth in Rev. Proc. 75-21, 1975-1 C.B. 715, as amended through the Closing Date for such Unit. The adjustments to the amount of the rentals under the Lease pursuant to this paragraph shall be made by the Owner after due consultation with the Lessee. In this connection the Owner shall provide Lessee with a schedule setting forth in reasonable detail the computations and methods used in computing such adjustments.

(i) Lessee agrees to cooperate and join with the Owner, at the Owner's expense, in any administrative or judicial proceeding in which the Owner is engaged in order to sustain its entitlement to any of the tax benefits the Loss of which is specified in paragraph (a) of this § 16 if such Loss is the result of an amendment or change described in subparagraph (vi) of paragraph (b) of this § 16.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 10% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to Donald G. Lohmann, Vice

President, and E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606; Attention Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 231 South La Salle Street, Chicago, Illinois 60693, Attention of Corporate Trust Department.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section

20c of the Interstate Commerce Act.

§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

[Corporate Seal]

by

Attest:

----- Vice President -----

Assistant Secretary

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee

[Corporate Seal]

by

Attest:

Vice President

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this the day of , 19 , before me, , the undersigned officer, personally appeared , who acknowledged himself to be the of THE CONNECTICUT BANK AND TRUST COMPANY, a corporation, and that he, as such , being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as .

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50' 6" 70-ton XM Box Cars	344	CNW 155794 through 156137

SCHEDULE 2 TO LEASE
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
Interim Payment	106.154
No. 1	105.600
No. 2	105.094
No. 3	104.703
No. 4	104.303
No. 5	103.973
No. 6	96.768
No. 7	96.376
No. 8	95.814
No. 9	95.242
No. 10	87.646
No. 11	86.786
No. 12	85.617
No. 13	84.364
No. 14	75.956
No. 15	74.988
No. 16	73.632
No. 17	72.171
No. 18	70.270
No. 19	68.235
No. 20	65.708
No. 21	63.018
No. 22	59.849
No. 23	56.364
No. 24	52.548
No. 25	48.519
No. 26	44.267
No. 27	39.531
No. 28	34.801
No. 29	29.815
No. 30	29.068
No. 31	28.389
No. 32	27.775
No. 33	27.226
No. 34	26.741
No. 35	26.320
No. 36	25.712
No. 37	25.416
No. 38	25.182
No. 39	25.011
No. 40	20.350

ASSIGNMENT OF LEASE AND AGREEMENT
dated as of July 1, 1977 (hereinafter called
this Assignment), by and between THE CONNECTICUT
BANK AND TRUST COMPANY, not in its individual
capacity but solely as trustee (hereinafter
called the Lessor or the Vendee) under a
Trust Agreement dated as of the date hereof
(hereinafter called the Trust Agreement) with
HFC Leasing Inc. (hereinafter called the
Beneficiary) and CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO, as Agent
(hereinafter called the Vendor) under a
Participation Agreement dated as of the date
hereof.

WHEREAS the Vendee is entering into a Conditional
Sale Agreement dated as of the date hereof (hereinafter
called the Security Documentation) with Whittaker Corporation
(Berwick Forge & Fabricating Division) (hereinafter called
the Builder), providing for the sale to the Vendee of such
units of railroad equipment (hereinafter called the Units)
described in Annex B thereto as are delivered to and
accepted by the Vendee thereunder;

WHEREAS the Lessor and Chicago and North Western
Transportation Company (hereinafter called the Lessee)
have entered into a Lease of Railroad Equipment dated as of
the date hereof (hereinafter called the Lease), providing
for the leasing by the Lessor to the Lessee of the Units;
and

WHEREAS, in order to provide security for the
obligations of the Lessor under the Security Documentation
and as an inducement to the Vendor to invest in the
Conditional Sale Indebtedness (as that term is defined in
the Security Documentation), the Lessor agrees to assign for
security purposes its rights in, to and under the Lease to
the Vendor;

NOW, THEREFORE, in consideration of the premises
and of the payments to be made and the covenants hereinafter
mentioned to be kept and performed, the parties hereto
agree as follows:

1. The Lessor hereby assigns, transfers and sets

over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, so long as no Event of Default or event which with lapse of time and/or giving of notice provided for in the Lease could constitute an Event of Default under the Lease shall have occurred and be continuing, and without any way limiting the right of the Vendor to exercise the rights assigned to it hereunder on its own without the consent of the Vendee, the Vendee shall be entitled to exercise any right of the Lessor under the Lease if the holders of interests totaling more than 70% of the aggregate Conditional Sale Indebtedness then outstanding shall have consented to, and the Vendor shall have been notified by the Vendee or the Beneficiary of, such exercise. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments made by the Lessee to the Vendee or the Beneficiary pursuant to § 16 of the Lease.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation and Paragraph 8 of the

Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. The Vendor shall notify the Lessor at the address set forth in the Lease (i) of the Vendor's receipt of any rental payment under the first paragraph of § 3 of the Lease and (ii) if the Vendor shall not receive any such rental payment when due; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor

the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or the Beneficiary, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor or the Beneficiary shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights

assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The counterpart of this Assignment delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment to the extent they are for the sole benefit of the Lessor and not required to satisfy the obligations of the Lessor under the Security Documentation, without the prior consent of the Lessor.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of

the Lessor under the Security Documentation or amounts payable under § 16 of the Lease, or empower the Vendor in any way to waive or release the Lessee's obligation to pay the same, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts and amounts payable under § 16 of the Lease, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written consent of the Vendor and (b) each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or negligence, or against the Beneficiary under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Beneficiary, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested,
all as of the date first above written.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

[Corporate Seal]

by

Attest:

Vice President

Assistant Secretary

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Agent,

[Corporate Seal]

by

Attest:

Vice President

Trust Officer

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this the day of , 19 , before me,
 , the undersigned officer, personally
appeared , who acknowledged himself to be
the of THE CONNECTICUT BANK AND
TRUST COMPANY, a corporation, and that he, as such
 , being authorized so to do, executed the foregoing
instrument for the purposes therein contained, by signing
the name of the corporation by himself as .

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of , 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of Continental Illinois National Bank and Trust Company of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys (other than any payment provided for by § 16 of the Lease) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at 231 South La Salle Street, Chicago, Illinois 60693, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) in accordance with the provisions of the Lease Assignment, the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois

and, for all purposes, shall be construed in accordance with the laws of said State.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY, as Lessee,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of July 1977.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO, as
Agent,

by

Vice President

Chicago and North Western
Transportation Company
XXXXXXXXXXXX
Railway



August 30, 1994

File: A-10333
EOC: 0-005

Chicago and North Western Center
Chicago, Illinois 60606

Office of the Secretary
Attn: 559 6150

Mr. Sidney Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RE: Lease and Railroad Equipment dated as of July 1, 1977 between Chicago and North Western Transportation Company and The Connecticut Bank and Trust Company, as Trustee.

ICC Recordation No.: 8959

Dear Mr. Strickland:

In connection with the above agreements, please be advised that the name of Chicago and North Western Transportation Company was changed to Chicago and North Western Railway Company effective May 6, 1994, pursuant to the Certificate of Amendment of Restated Certificate of Incorporation of Chicago and North Western Transportation Company filed with the State of Delaware on May 5, 1994.

Sincerely,

Handwritten signature of K. A. Dombrowski.
K. A. Dombrowski
Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

On this 30th day of August, 1994, before me personally appeared K. A. Dombrowski, to me personally known, who, by me being duly sworn, says that she is Assistant Secretary of Chicago and North Western Railway Company and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: April 12, 1995

Handwritten signature of Penny Menchey.

